

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MBODY MINIMALLY INVASIVE SURGERY, P.C.,
NICK GABRIEL, D.O., JODIE BREWER and ERIN
NASTRO,

Plaintiffs,

Civil Act. No.: 14-cv-2495(ER)

-against-

**NOTICE OF MOTION
TO DISMISS**

UNITED HEALTHCARE INSURANCE COMPANY,
UNITED HEALTHCARE OF NEW YORK, UNITED
HEALTHCARE SERVICE, LLC, and UNITED
HEALTHCARE SERVICES, INC.,

Defendants.

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PLEASE TAKE NOTICE THAT, upon the accompanying Memorandum of Law, Declaration of Han Nguyen dated December 17, 2015 and the exhibits annexed thereto, Declaration of Terri-Lee Brinkler dated October 16, 2014 with exhibits; Declaration of Jeff Pogany dated October 16, 2014 with exhibits annexed thereto; Declaration of Michael H. Bernstein dated December 18, 2015 and the exhibit annexed thereto, and upon all pleadings and prior proceedings heretofore had herein, Defendants United Healthcare Insurance Company, United Healthcare of New York, United Healthcare Service, LLC, and United Healthcare Services, Inc., by and through their attorneys, Sedgwick LLP, now respectfully move for an order pursuant to Rules 12(b)(1) and (6), FED. R. CIV. P., dismissing Plaintiffs Mbody Minimally Invasive Surgery, P.C., Nick Gabriel, D.O., Jodie Brewer and Erin Nastro, claims in their entirety on the grounds that the claims are barred because Plaintiffs' Amended Complaint fails to state a claim for relief and to the extent that the claims alleging federal question subject matter jurisdiction are dismissed, the Court does not have subject matter jurisdiction to address the state law claims.

Dated: New York, New York
December 18, 2015

Respectfully Submitted,

s/ Michael H. Bernstein

Michael H. Bernstein

John T. Seybert

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Attorneys for Defendants